IN THE

Supreme Court of the United States

October Term, 1978

No. 78-631

BILLIE V. BUSH

Petitioner

v.

MAYOR RAY WEBSTER, Et Al.,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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v.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS THE FIFTH CIRCUIT

Petitioner, Billie V. Bush, prays that a Writ of Certiorari issue to review the judgment of United States Court of Appeals Fifth Circuit entered February 17, 1978.

Opinions Below

Judgment of Court of Appeals was without opinion. Memorrandum of Decision, January 17, 1977, was opinion of District Court. Decision attached herewith.

Jurisdiction

Judgment of Court of Appeals entered February 17, 1978. Petition for Rehearing and for Rehearing en Banc denied April 19, 1978. Order extending time to file petition for certiorari signed by Justice Powell, July 11, 1978,to and including September 16, 1978. Jurisdiction of this Court invoked under 28 U. S. C. Section 1343 (3) (4) and 42 U. S. C. Section 1983.

Questions Presented

1. Did the Complaint state a claim upon which relief could be granted ?

2. Was there any genuine issue of fact in this case ?

3. Does affirmance without opinion by the panel indicate that a visitor from another State, passing through Alabama, without intention of stopping, does not have a right to be reasonably informed of the fact that Marion County is dry?

Statutory Provisions Involved

Federal jurisdiction is conferred by 28 U. S. C. Section 1343 (3) (4). Pertinent parts:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens.....

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, ...

The Federal Civil Rights Acts, 42 U. S. C. Sections 1981-1988 provide the statutory bases for this case. Of these statutes, Section 1983 provides:

Every person who, under color of any statute , ordinance, regulation, custom, or usage, of any State or Territory,subjects, or causes to be subjected,any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall

be liable to the party injured in an action at law,suit in equity, or other proper proceeding for redress.

Constitution of the United States.

The Fourteenth Amendment protects deprivations of "life, liberty, or property, without due process of law."

Defendants (1) acted under color of law and (2) subjected petitioner to a deprivation of rights, privileges or immunities secured by the Constitution and/or laws of the United States.

Statement of the Case

Petitioner is a white male citizen of State of Mississippi who was born June 24, 1914.

On night of April 4, 1975, petitioner was driving alone, in his vehicle, from the home of his parents, Conway,Arkansas, to Atlanta, Georgia, to attend a Democratic Party Conference.Petitioner stopped in Hamilton, Marion County, Alabama,for gas and ate supper at the station.Petitioner had been gone from the station for only some five minutes when he was stopped by two unidentified men, both armed, who ordered him out of his car, searched him and his vehicle, refused to identify themselves, forced him back into his car, and then called on their radio to their confederates, who were ahead, to arrest him for being drunk. Petitioner was stopped a second time a few minutes later. Two unidentified men, both armed, ordered him out of his car, searched him, ordered him into their car while one of them took possession of his car. Petitioner was violating no law, had committed no crime, and the officers did not have a warrant to arrest or to search. Petitioner was taken to Winfield, Marion County, where he was forced to submit, against his will and without a court order,

to undergo a Photo Electric Intoximeter test (PEI). The result of the test was 0.06.The officers took petitioner to his car, returned keys and drivers license, and said, "You are lucky. Now hit the road and keep going." Petitioner refused to leave and said, "I am not ready to go. I intend to find out who you are and what this is all about." One of them entered the car, without permission and without a search warrant, found a bottle with a few ounces of liquid in it, and arrested petitioner for illegal possession in a dry county. Petitioner refused to pay a fine or to put up bond money as a matter of principle. Petitioner did not go to jail because he wanted to go to jail.

The next morning petitioner was brought before Mayor Webster, of the little town of Gu-Win.It is located on Highway 78, between towns of Guin and Winfield. Town is so small that family and friends of petitioner had difficulty locating it. The address of the mayor is Route 2, Guin. One of the officers lived in a near by town of Detroit.Petitioner has been unable to obtain an address for the other. Petitioner was told by Mayor Webster that the next day for court would be May 3, 1975, and that there were three options, pay a fine of $117.50; get two property owners in Marion County to sign bond; or go to jail. Petitioner chose jail as a matter of principle.Petitioner was then put into the cage of the police car and left alone for some time. Petitioner was then brought before the Mayor again.This time he was offered a another option, i.e. a $65.00 deal. Petitioner again refused their offer.

Petitioner was returned to Marion County jail, put into a cell, his coat and personal belongings were taken from him by the defendant Sanderson, who did personally take and place petitioner in the cell. Petitioner was unable to make a phone

call until Monday April 7, 1975. Petitioner spent nine days in the cell, with no heat, no coat, the weather was cold, and there were broken and missing glass panes in the windows. Petitioner managed to send word to the Birmingham office of the Federal Bureau of Investigation and they sent an agent to interview him. The Marion County Sheriff received word from Governor George Wallace regarding petitioner and he came to the cell, and unlocked it, and apologized for what had happened. Petitioner was removed to a more comfo rtable cell and,allowed to go to his car, get personal items, etc.Petitioner instituted habeas corpus proceedings in Federal District Court and Marion County Court, each to no avail. April 25, 1975, petitioner was removed from jail to Gu-Win for trial. Outside the jail, while petitioner was locked in cage of police car, defendant Sanderson, in the company of the assistant jailer, did go to and entered the car of petitioner and took a Marine Corp knife from said car. The other policeman, Grant, tried to entrap petitioner into making a confession or statement,that he, i. e., petitioner, had tried to or did threatened to kill him (Grant) with the knife. Petitioner was then shown the tape recorder. Said tape recorder was used during the trial. Petitioner was tried without a jury, without an attorney, and without being able to call witnesses. Petitioner was found guilty of possession of illegal beverages, fined $50.00 plus $15.00 costs and 30 days in jail. Petitioner made bond and appealed to the Marion County Circuit Court. On November 6, 1975, Petitioner appeared for second tim time in Circuit Court and his case was dismissed for want of prosecution.Petitioner obtained bond money but has never obtained his personal property. On April 27, 1976, petitioner filed an action against Town of Gu-Win, Mayor Webster and policemen Grant and Sanderson, in United States District Court for the Northern District of Alabama. On June 30, 1976,

District Court dismissed Town of Gu-Win as defendant.October 7, 1976, pretrial conference held in Jasper, Alabama. Defense counsel admitted for first time that petitioner's story of being "set up" was true and he furnished names of other two policemen involved.January 17, 1977, Court granted summary judgment for defendants.

The basis for federal jurisdiction in the court of first instance:

28 U. S. C. Section 1331. Federal Question; Amount in Controversy;

(a) The district courts shall have original jurisdiction of all civil actio ns wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

Section 1332.Diversity of Citizenship; Amount in Controversy;

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs, and is between--

(1) citizens of different states;

Reasons for Granting the Writ

1. Did the Complaint state a claim upon which relief could be granted?

At the very least, the Complaint states, and the Defendants do not deny the fact, that petitioner spent twenty-one days in the Marion County jail, and that he had been convicted of no crime.They deny that petitioner spent nine days in solitary confinement, without heat, without a coat, and with broken window panes. Defendants admit that they took personal property from petitioner and that they have refused to return it. They have neither admitted nor denied the fact that they have refused to give petitioner a receipt for his property. As the District Court articulated in its Memorandum Of Decision:

> "There is some disagreement as to whether defendants Grant and Sanderson stopped the plaintiff or whether they were merely following the plaintiff and he stopped of his own accord."
>
> (Memorandum, page 2)

See Moore's Federal Practice, 2nd Edition Par. 56.27(1), pp. 56-1554-1559."The moving party has the burden of clearly establishing the lack of a triable issue of fact upon a record that is adequate to the legal issue presented; his moving papers are carefully scrutenized while those of the opposing party are indulgently regarded." Moore's Federal Practice, supra, p.56-1556.

The Complaint states the whole case was tainted because the evidence had come from material obtained in an illegal search and seizure.

Searches and seizures conducted in viola- of the Fourth and Fourteenth Amendments are actionable under the Civil Rights Act.Monroe v. Pape,365 U.S. 167 (1961);Fisher v.Volz, 496 F.2d 333 (3rd Cir.) (1974); Lankford v. Gelston, 364 F.2d 197 (4th Cir.) (1966); Lykken v. Vavreck,366 F. Supp. 585(D. C. Minn.) (1973); Lynch v. Household Finance Corp., 405 U.S. 538 (1972).

In Fisher v. Volz, supra at 341, the Court stressed the significance of the Fourth Amendment's protections:

> High on the list of constitutional rights is the right of an innocent citizen to be free from unreasonable intrusion into the privacy of his home. A warrant for the arrest of a suspect may indicate that the police officer has probable cause to believe the suspect committed a crime;it affords no basis to believe that the suspect is in some stranger's home. Permitting reliance by the officer solely on exigent circumstances offers too many opportunities for abuse, provides little comfort to a citizen peacefully in his home, and affords insufficient protection against invasions of his privacy. A requirement that the officer must also have probable cause to believe that the suspect is in the dwellingwill not unduly restrict the effectiveness of police action but will reduce the obvious risks of abuse.It offers police considerable latitude but also requires a necessary amount of restraint.It should enable the police

to act reasonably but not oppressively, promptly but not recklessly, lawfully but not offensively.

> Law observance by the police cannot be divorced from law enforcement. When official conduct feeds a sense of injustice, raises barriers between the department and segments of the community, and breeds disrespect for the law, the difficulties of law enforcement are multiplied.
> Lankford v. Gelston,364 F.2d at 204.

The deliberate denial of counsel,absent an intelligent and voluntary waiver, is a deprivation of rights guaranteed by the Sixth and Fourteenth Amendments, and is also actionable under the Civil Rights Act. Wounded Knee Legal Defense/Offense Committee v. F. B. I., 507 F.2d 1281(8th Cir.1974);Williams v. Liberty,461 F.2d 325(7th Cir.1972).

Petitioner alleges an action for false arrest and detention for violations of the Fourth and Fourteenth Amendments and under Section 1983.Street v.Surdyka,492 F.2d 368 (4th Cir.1974);Martin v.Duffie, 463 F.2d 464 (10th Cir.1972);Monroe v. Pape, 365 U.S. 167 (1961).Also, alleges deprivation of rights, privileges, or immunities secured by the Fourth Amendment and Section 1983.Anderson v. Nosser, 456 F.2d 835 (5th Cir.1972);Hileman v. Knable, 391 F. 2d 596 (3rd Cir.1968). Petitioner points out and alleges that even though he was not "formally" arrested by the first policemen, there was a limitation of the freedom of his movement, and a violation of the Fourth Amendment.Terry v. Ohio, 392 U. S. 1 (1968).

Petitioner alleges that there was a conspiracy on the part of Marion County law-enforcement officers to convict him by the knowing use of perjured testimony. Petitioner alleges that the truth is that he was "set up", stopped, searched, because the officers were looking for drugs.Petitioner alleges that the day after he was arrested, a search warrant was made out and signed by Mayor Webster. The warrant was defective in several ways but primarily because it was not signed by anyone except Mayor Webster and Policeman Grant. The vehicle was not present at the time the warrant was made out and signed. Vehicle was then brought to the area and searched under the supervision of Mayor Webster. Petitioner observed the search and realized that they were really looking for drugs. During petitioner-'s twenty-one day incarceration he had ample opportunity to study the operation of the jail and to observe the Marion County law enforcement officials.At pretrial hearing, Jasper, Alabama, October 7, 1976, petitioner did attempt to tell the Court these facts. The Court was not interested and only said, "Perhaps".The Court elided this point from its Memorandum of Decision.Petitioner has said and does say that truth should be brought into the courtroom. Petitioner alleges that the knowing use of false testimony by the prosecution against an accused in a criminal trial offends fundamental fairness and constitutes a denial of due process of law. Miller v. Pate, 386 U. S. 1 (1967); Napue v. Illinois, 360 U. S. 264 (1959).

2. Was there any genuine issue of fact in this case?

Many hard questions appear in this case. History, justice, and the integrity of our judicial system demand that they be fully answered.

Was the search of petitioner's car, without a search warrant, at nighttime, without his consent, in Town of Winfield, a legal search and seizure?Petitioner says No.The paradox of the exclusionary rule was described sardonically by the late John Wigmore, dean of the Northwestern University Law School and the author of the leading treatises on the law of evidence:

> Our way of supporting the Constitution is not to strike at the police officer who breaks it but to let off somebody else who broke something else.

Is there a conflict between the Fourth Amendment and the Implied Consent Law of State of Alabama?Petitioner contends that he was faced with a Hobson's choice situation, i.e., he had no choice. If he did not take the test he was drunk. Petitioner contends that the PEI test was an invasion of his privacy and also an illegal search of his body. "The Fourth Amendment protects people, not places". Katz v. U. S., 389 US 347, (1967)

Were petitioner's rights violated when his Miranda rights were not read and explained to him?Petitioner alleges that not even lip service was paid to these rights.Petitioner alleges that the two arresting officers did not know of any

such rights.Petitioner alleges that the Miranda decision was based upon constitutional interpretation. Miranda v. Arizona 384 U. S. 436 (1966).

3.Does affirmance without opinion by the panel indicate that a visitor from another State, passing through Alabama, without intention of stopping, does not have a right to be reasonably informed of the fact that Marion County is dry?

Petitioner alleges that it took him two years to obtain information from Alabama officials regarding this matter. There are 67 counties in Alabama "of which 30 are dry".The State of Alabama spends money to attract tourists but nowhere could petitioner find any mention of the fact that certain counties had "peculiar dry laws" and that the innocent traveler should proceed with care. Petitioner checked the Official State Highway Map for visitors and the booklet for tourists.Petitioner also checked the Welcome to Alabama signs at four different places. Not one word of warning or caution was found.

CONCLUSION

For the above reasons, a Writ of Certiorari should issue to review the judgment of the Fifth Circuit, and to award petitioner a reasonable attorneys fee.

Respectfully,

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CERTIFICATE OF SERVICE

I, Billie V. Bush, attorney pro-se for the petitioner, do hereby certify that I have this day mailed three true and correct copies of the above and foregoing Petition For Writ of Certiorari, to the Honorable Jerry Guyton, Counsel for Defendants Mayor Ray Webster, ET AL, at his usual business address, Box 82, Hamilton, Alabama 35570. This the 14 day of September 1978.

Billie V. Bush
Pro Se